IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION No. 2153 of 1999

1. Raymond Limited,)
a company incorporated under)
the provisions of the Indian)
Companies Act, 1913 and having)
its registered office at Plot No.)
156/H No. 2, Village Zadgaon,)
Ratnagiri, Maharashtra 415 612)
and having its Mumbai Office at)
New Hind House, N. M. Marg)
Ballard Estate, Mumbai 400 001.)

2. Krishnamurthy Seetharaman,)
of Bombay, Indian Inhabitant,)
having my Office at J. K. Gram,)
Pokhran Road, Thane 400 606.) ... Petitioners

Versus.

1. Thane Municipal Corporation,)

having its office at Mahanagar)
Palika Marg, Dr. Almeida Road,)
Chandan Park, Paj Pakhadi,)
Thane 400 602.

2. Municipal Commissioner,)
having his office at Mahanagar)
Palika Marg, Dr. Almeida Road,)
Chandan Park, Paj Pakhadi,)
Thane 400 602.)

3. The Assistant Commissioner,)
(Octroi), Thane Municipal)
Corporation, and having his office)
at Mahanagar Palika Marg,)
Dr. Almeida Road, Chandan Park,)
Paj Pakhadi, Thane 400 602.) ... Respondents.

Shri D.B.Shroff, Sr. Advocate with H. N. Vakil
i/b. M/s. Mulla & Mulla & CBC , Advocates for the petitioners
Shri R.S. Apte, advocate for respondents

CORAM: SHRI R.M.S. KHANDEPARKAR
&
SMT. ROSHAN DALVI JJ.
DATE: 28/4/2006

ORAL JUDGMENT (Per R.M.S. KHANDEPARKAR J.)

1. Heard learned Advocates for the parties. The Petitioners challenge the communication to the petitioners by the respondent Corporation under the letter dated 5th November 1998 on the ground that the same is contrary to the provisions of the Maharashtra Municipalities (Octroi) Rules, 1968, herein after called as "the said rules".
2. Few facts relevant for the decision are that the petitioners carry on business inter alia of manufacturing manmade as well as blended woolen fabrics and have one of their factory situate at Thane, within the State of Maharashtra. In the course of manufacture of the final product, it has to undergo various stages of manufacturing. The petitioners import raw wool, and polyester tow/ fiber from different parts of the country. The said goods form the basic raw material for manufacturing the ultimate product of fibric. The actual process comprises of three stages. In the first stage, the raw material is processed and the raw wool is converted into

wool top, polyester top and then into polyester wool top. The second stage comprises of conversion of the said product into yarn and/or threads. However, for the purpose of completion of this second stage, the petitioners do not have the necessary machinery with them, and they entrust the job work in that regard to different industrial undertakings including Mohan Woolen Mills Limited, having its factory at Hunsur, in the State of Karnataka. For that purpose the product on completion of its first stage is transported beyond the limits of Thane Municipal Corporation to the factory of Mohan Woolen Mills Limited where said product is processed and converted into yarn, which forms the raw material for production of final product i.e. , the manmade as well as blended woolen fabric and for that purpose at the third stage, the yarn produced by Mohan Woolen Mills Limited is again imported into the limits of Thane Municipal Corporation for further processing by the petitioners. Such products either as raw materials or final products imported within the limits of the Corporation are subject to payment of octroi duty at its entry point. The provisions regarding

imposition of octroi duty are governed by the said rules. Under the said rules, there are various provisions which provide for concessional rates alongwith the usual rates of the octroi duty and the circumstances under which the importer is entitled for concessional rate of octroi duty.

3. According to the petitioners all along the petitioners were allowed to avail of the benefit of concessional rate of 1.25 % instead of usual 4% of octroi duty, on the raw materials imported by the petitioners either at the first stage or at the third stage of the manufacture of the final product. However, suddenly in the year 1998, and in particular, on 5th November 1998 the respondent Corporation insisted for payment of full octroi duty ie., at the rate of 4% on the raw materials imported by the petitioners for the third stage of processing. The said claim continued to be made for the period from August 1998 to January 1999. After 1998 the provision regarding the liability to pay octroi duty in the case of goods imported underwent considerable changes, with which we are not concerned in the present petition. The period relevant for the consideration is from August 1998 to

January 1999.

4. It is the case of the respondent on the other hand that once a concessional rate of octroi duty is availed on the raw material imported within the limits of the Corporation and it is sent for further processing beyond the limits of the Corporation and thereafter again imported, the same is not entitled to avail the concessional rate and they have to pay the full octroi duty on the added value to the raw material.

5. Both the parties referred to the provisions comprised under clause (1) of Part 1-A, read with items 64 and 65 of Schedule of the said Rules in support of their rival contentions. Learned advocate for the petitioner has also drawn our attention to the decision of the Apex Court in the matter of **Bombay Chemicals Pvt. Ltd. , vs. Collector of Central Excise, Bombay reported in 1995 (77) E.L.T. 3 (S.C.),** and the Division Bench of this court in **Citric India Ltd. Vs. Union of India**, reported in **1993 (66) E.L.T. 566 (Bom.)**, while submitting that the parties are not entitled to read any additional word or words in the statutory provisions nor is entitled to interpret the statutory provisions by incorporating

additional phrases in a statutory provision.

6. On the other hand the learned advocate for the respondent has sought to rely upon the unreported decision of this court in **Writ Petition No. 1412 of 1984 delivered on 15th January 1985** between the same parties.

7. The Part IA of the said rules deals with the subject of list of goods on which octroi shall be payable at a lower rate by certain industrial undertakings. Clause (1) thereunder inter alia provides that all goods specified in entries 64 and 65 in schedule I when imported by an industrial undertaking for use as raw material for processing within that undertaking and when declaration in respect thereof is submitted by the undertaking in Form 14, shall be subject to octroi by any Council at a rate not exceeding 1.25 per cent and not less than 0.25 per cent. Entry 64 in Schedule I of the said rules refers to “raw or unspun wool”, hemp, jute, coconut and other fibres and rope and articles made thereof and item 65 thereof refers to “yarn and threads of all sorts”. In terms of schedule I ad valorem octroi duty leviable on such products is 4% maximum and 0.50% minimum.

8. The declaration in form 14 requires the importer to assure the Corporation that the products sought to be imported shall not be used by the importer for any purpose other than for manufacture of a particular product specified in the declaration.

9. The provisions of law referred to above therefore evidently disclose that raw or un-spunched wool as well as yarn is normally subject to 4% maximum octroi duty when imported within the territorial limits of the respondent Corporation. However, when the same goods are imported by an industrial undertaking for the use as the raw material for processing by the same undertaking and if the said goods are to be used as raw material for processing within the same undertaking is disclosed in the declaration in form No. 14 by such importer , the goods can be subjected to octroi duty at the rate not exceeding 1.25% and not less than 0.5%. In other words, the goods to which the provisions of clause 1 of part IA of second schedule of the said rules apply, the goods are entitled for concessional rate of octroi duty in terms of the said provision of law.

10. In the case in hand, it is not in dispute that till August 1998 the goods like raw wool as well as yarn imported by the petitioner as raw materials for further processing were allowed to be imported on payment of octroi duty at the concessional rate in terms of clause I of Part IA of the second Schedule and they were not subjected to octroi duty of 4% in terms of Schedule I, items 64 and 65. It was for the first time on 5th November 1998 that the respondent Corporation sought to demand the octroi duty at the rate of 4% in terms of schedule I on such products imported by the petitioner within the territorial limits of the respondent – Corporation.

11. As already seen above the process of manufacture of the manmade fabrics and or blended yarn fabrics comprised of three stages and processing at two stages was being done by the petitioner in their factory situated within the territorial limits of respondent – Corporation whereas processing at the second stage was done on job-work basis from a different factory and for that purpose the goods after completion of first stage were sent to another factory for job- work and after completion of the second stage they were brought again for

final stage process of manufacture of final products. Merely because manufacture of a particular product consists of different stages and in one of the stage, the goods are sent to a different factory and for that purpose beyond the territorial limits of the respondent – Corporation and on completion of such stage are brought again within the territorial limits of the respondent – Corporation, it cannot be said that such goods are not imported as the raw material and that they are necessarily being imported as the final products.

12. For the purpose of ascertaining as to whether the goods which are imported satisfies the description of the goods in items 64 and 65 in the First Schedule as the final products or they are the raw materials for further processing brought by the importer, it is necessary to take into consideration the purpose for which such goods are imported by the importer. Once the importer had submitted the declaration to the effect that the goods were of the description under items 64 and 65 of Schedule I and were imported as the raw materials for processing within the territorial limits of the respondent – Corporation, the claim of importer in terms of clause 1A of

Schedule could not have been rejected or denied unless the Corporation could have disputed the said claim on justifiable ground. Once the importer satisfies the authority by filing proper declaration in form 14 as required under clause 1 of such Part IA, and the importer possess a licensed factory for manufacture of the final product out of such raw materials, the presumption would be in favour of the importer to enable him to avail concessional rate of octroi duty in terms of the said clause 1 of Part 1A. Ofcourse, such presumption is rebuttable but for that purpose the respondent – Corporation has to take appropriate proceedings and merely because the Officer of the Corporation feels or thinks that such goods may not be used for processing within the undertaking for the final product, that by itself cannot be sufficient to deny the importer the concessional rate of octroi duty.

13. In the case in hand, undisputedly the petitioner had a factory for production of the final product in the nature of manmade fabrics and / or blended yarn. The petitioners had imported the raw wool for completion of the first stage in the manufacture of final product. Undisputedly after completion

of the first stage the product was sent to Mohan Woolen Mills Limited for completion of the second stage of the manufacture of the final product. Undisputedly after completion of such stage, the yarn was produced out of the raw material supplied by the petitioners on completion of the first stage. The said yarn was was sought to be imported by the petitioners as the raw materials, for the final stage of the process of manufacture of manmade fabrics and or blended yarn fabrics. Record placed before us nowhere discloses that the respondent – Corporation had ever disputed the fact that the petitioners had filed declaration in form 14 in terms of clause 1 of Part 1A of second schedule. In such undisputed circumstances, there was no scope for the respondent to contend that the imported goods were not the raw materials for processing within the undertaking of the petitioners for manufacture of the final product of manmade fabrics and / or blended yarn fabrics. Being so the petitioner is justified in contending that the respondent had illegally sought to deny the concessional rate to the petitioner in respect of the yarn which was sought tobe imported during the period from

August 1998 to January 1999.

14. The learned advocate for the petitioners is justified in drawing our attention to the decisions of the Apex Court in Bombay Chemicals (supra) as well as to the Division Bench decision (supra) in relation to the rule of interpretation of statutes.

15. In Bombay Chemicals case the Apex Court had held that one of the settled principles of construction of an exemption notification is that it should be construed strictly, but once goods are found to satisfy the test by which they fall in the exemption notification, then the same cannot be excluded from it by construing such notification narrowly. As already seen above clause 1 of Part I A specifically refers to items 64 and 65 from Schedule 1 and those items referred to are raw or unspun wool and yarn. The Notification specifically states that such goods when imported by an industrial undertaking for use as raw materials for processing within the undertaking by the importer, the same would be subject to concessional rate of octroi duty. The said clause 1 further specifies that when a declaration in that regard is made by

the importer, that is to say, that the goods imported are the raw materials for processing within the factory of the importer and they will be utilized as such, then such goods shall be subject to octroi, with concessional rates, as specified under the said clause. In other words when the goods which satisfy the description of items 64 and 65 of Schedule 1, are imported by the importer for use as raw materials for processing in his factory and a proper declaration in that regard is filed by the petitioner for manufacture, the Corporation is left with no option but to charge concessional rate of duty as specified under Schedule 1 unless the Corporation is able to prove the declaration to be false or the use to be other than the one one disclosed in the declaration. Once the provision of law was found to be applicable to those goods the concession provided under the said provision of law was squarely applicable to such goods and the same could not have been denied by construing the relevant provisions narrowly. The decision of the Division Bench in **Citric India** case (supra) is to the effect that when the plain reading of the exemption notification makes it clear that the exemption

is available as soon as the article is found to be of a particular description, the same cannot be denied by reading into the exemption notification some additional words which in fact do not exist in such notification. Similar rule will apply while interpreting a provision of law relating to exemption or of concession in relation to the octroi duty payable on a particular product. As already seen above clause 1 of Part 1A specifically grants concessional rates to the goods covered by items 64 and 65 of Schedule 1, when they are brought in particular circumstances for a particular use specified under the said clause and where those circumstances and the purpose are satisfied on the basis of the declaration given under form 14, the Corporation would not be entitled to misconstrue the provision of law by reading some non-existing words in the said statutory provision and thereby deny the benefit thereunder to the importers.

16. The decision which is sought to be relied upon by the learned advocate for the respondent is on a different issue and has no application to the case in hand. It was on the point as to whether the goods once complete a particular

stage in the process of manufacture and on completion of that stage they are sent beyond the territory of the Corporation and thereafter, after completion of second stage again brought back within the territorial limits of the Corporation whether such goods could be subject to payment of octroi duty or not. Whether such claim for octroi duty could be for a regular rate or concessional rate was not at all the subject matter of that decision, which is the subject matter of the case in hand, and therefore the said decision is of no help to the respondent.

17. For the reasons stated above, the petition succeeds. The same is allowed and rule is made absolute in terms of prayer clause (a) and it is directed that the respondents shall be entitled to claim octroi duty on the goods imported on completion of the second stage of processing and for the purpose of further processing during the period from August 1998 to January 1999 at the concessional rate of 1.25% and not regular rate of 4% octroi duty on such goods. There shall be no order as to costs.

(SMT. R.S. DALVI J.) (SHRI R.M.S.KHANDEPARKAR J)